

**MINUTES OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**
Monday, December 16, 2002 – 3:00 p.m. – Room 416 State Capitol

Members Present:

Sen. Howard A. Stephenson, Senate Chair
Rep. David Ure, House Chair
Sen. Mike Dmitrich
Rep. Judy A. Buffmire
Rep. James R. Gowans
Rep. Merlynn T. Newbold

Staff Present:

Mr. Arthur L. Hunsaker, Research Analyst
Ms. Susan Creager Allred, Associate General Counsel
Ms. Wendy L. Bangerter, Legislative Secretary

Members Absent:

Sen. Ed Mayne
President Al Mansell
Sen. Michael G. Waddoups
Speaker Martin R. Stephens

Note: A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or by contacting the committee secretary, Cassandra Bauman, at 538-1032.

1. Committee Business

Chair Ure called the meeting to order at 3:15 p.m. Due to the lack of a quorum, no action was taken on the minutes of the December 3, 2002 meeting.

2. R657-3 Collection, Importation, Transportation, and Possession of Zoological Animals

Mr. Kevin Conway, Director, Division of Wildlife Resources, distributed a memorandum "Revision of rule for collection, importation, transportation, and possession of reptiles and amphibians". He stated that the Division has worked with RANA (Reptile Amphibian Negotiation Association) and is preparing a new rule in accordance with those discussions.

Mr. Jeffrey Mitchell, RANA, stated that RANA is comfortable with how the Division of Wildlife Resources is addressing the major issues which were brought to the Committee on May 7, 2002. He stated RANA and the Division have an established direction on other issues and have resolved potential legal issues. He recommended that the Committee remove R657-3 from the list of rules to be sunsetted and stated that RANA would like to see a new rule by March 2003.

3. Policies and Rules of the Division of Services for People with Disabilities

Dr. Fran Morse, Director, Division of Services for People with Disabilities, indicated that Ms. Meredith Mannebach, Division of Services for People with Disabilities, has been assigned on a full-time basis to resolve the issues which arose in the September 9, 2002 committee meeting. Dr. Morse reported on seven steps that the Division has taken in correcting the conflicts between the Division's policies and rules:

- (1) Ken Hansen, Director, Division of Administrative Rules, trained the Board on differentiating between policy and rule.

- (2) The Board voted to eliminate numerous guidelines.
- (3) The Board directed Dr. Morse to create a workgroup.
- (4) The workgroup determined what should be included in the rule, from the eliminated guidelines.
- (5) The workgroup proposed the rule to the Board.
- (6) The Board voted on the content and will proceed with rulemaking.
- (7) A "Paperwork-reduction Initiative" will eliminate duplicate and conflicting written statements.

She indicated that the final report is scheduled to be released January 2003.

Mr. Don Rollins, Board of Trustees, South Valley Training Company, expressed hope that the Division will continue to resolve the many conflicts between its policies and its rules. He indicated that companies are being required to comply with agency requirements that are in policy but should be in rule.

Dr. Morse stated that she is working with a quality-monitoring team to ensure that sanctions are not enforced for noncompliance with an invalid rule or for noncompliance with a policy that has not been through rulemaking.

Dr. Morse and Mr. Rollins indicated that they are continuing to identify and resolve problems.

4. Policies and Rules – Discussion of Draft Legislation

Mr. Gary Doxey, General Counsel, Governor's Office, distributed and summarized a proposal suggesting language for the elimination of "policy" from statute which would be acceptable to the Governor's Office. He stated that current law is preferable to any change. He stated that his major concern is the potential confusion between the definition of "policy" and "rule." He opined that the language "has the effect of law" should remain in the statutory definition of "rule" because it is the key differentiation between a policy and a rule.

Mr. Ken Hansen, Director, Division of Administrative Rules, opined that the current language does have some problems but it is working. He indicated that the Committee's suggested language creates additional problems that the Committee does not have time to address before the 2003 General Session.

Committee discussion followed.

Chair Ure indicated that the purpose of the change in statute, as he understands it, is to guide future agency directors and committee members. He expressed concern that, without clarifying changes to the law, problems with the statutory definitions will continue to arise in the future.

Mr. Hansen explained that the Utah courts have made it clear, in *C.P. v. Utah Office of Crime Victims' Reparations* (victim reparations case), that in order for a rule or agency written statement to be enforced, it must go through the rulemaking process. He stated that the Division of Administrative Rules will update its rulemaking manual and integrate any possible changes or decisions which are made regarding the issue.

Committee discussion followed.

Mr. Doxey indicated that the proposal which he distributed unintentionally eliminated the definition of policy, and would not allow the Committee the option to sunset agency written statements which conform to the definition of a rule unless additional language is added to the proposal.

Ms. Allred explained that a written statement which an agency tries to enforce that has not been through rulemaking process is not a policy, but a non-functioning rule and is subject to legislative repeal. She noted that agencies must have statutory authority to write rules, but that policies exist with or without statutory authority. She reminded the Committee that agencies have developed and will continue to develop their own internal policies, guidelines, and protocols separate from rulemaking.

Committee discussion followed.

Mr. Bruce Johnson, Commissioner, Utah State Tax Commission, expressed concern about providing information to taxpayers in a way that they can understand. He recommended changing the draft definition of "rule".

Mr. Doxey indicated that the Governor's Office would object to the Administrative Rules Review Committee having a broadened authority to repeal by reference executive branch documents. He indicated that separation of powers would allow the Legislature to address those subjects of concern in statute instead of targeting specific documents.

Rep. Buffmire suggested the following changes to the draft legislation to address the concerns raised:

Delete lines 81-87 and insert on line 58 "(ii) has gone through the rulemaking process of this chapter, which includes the opportunity for public comment;"

Chair Ure directed staff to make the suggested changes using appropriate language or terms and bring the legislation back to the Committee at its next meeting.

5. Other Items / Adjourn

The next meeting is tentatively scheduled for Tuesday, January 14, 2003 at 9:00 a.m.

Due to the lack of a quorum, Chair Ure adjourned the meeting at 4:50 p.m.